

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
November 2, 2011
Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT LOUIS STEPHENS, JR.,

Defendant - Appellant.

No. 11-6153
(D.C. No. 5:10-CR-00205-M-1)

ORDER

Before **KELLY, MURPHY**, and **GORSUCH**, Circuit Judges.

This matter is before the court on the government's *Motion To Vacate and Remand*. We also have Mr. Stephens' response, as well as supplemental responses from both parties. Upon careful consideration of those pleadings, and recognizing specifically the United States' concession of error, we grant the government's motion.

Specifically, in its motion, the appellee concludes the district court made two erroneous factual findings in ruling on Mr. Stephens' suppression motion. The parties agree those errors were made. They differ, however, on the appropriate remedy for addressing those errors. The United States seeks remand for additional proceedings, and Mr. Stephens seeks remand with instructions to dismiss the charges.

We conclude, in this regard, that remand for additional proceedings, in the

discretion of the district court, is appropriate. Consequently, in granting the government's motion, we remand this matter to the district court with instructions to vacate its order dated October 28, 2010, and to conduct any and all additional proceedings it deems appropriate to re-address the suppression issue in this matter. This appeal is terminated, and a copy of this order shall stand as the mandate of the court.

Entered for the Court,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER
Clerk of Court